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ENGROSSED SUBSTITUTE HOUSE BILL 1117

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State of Washington

63rd Legislature

2013 Regular Session

**By** House Judiciary (originally sponsored by Representatives Hansen, Rodne, and Pedersen; by request of Uniform Laws Commission)

READ FIRST TIME 02/07/13.

1 AN ACT Relating to the transfer of real property by deed taking  
2 effect at the grantor's death; amending RCW 11.07.010, 11.11.010,  
3 11.18.200, 11.86.011, 11.94.050, 82.45.010, 82.45.197, 82.45.150, and  
4 84.33.140; reenacting and amending RCW 11.02.005 and 84.34.108; adding  
5 a new chapter to Title 64 RCW; and providing a contingent effective  
6 date.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

8 NEW SECTION. **Sec. 1.** SHORT TITLE. This chapter may be cited as  
9 the Washington uniform real property transfer on death act.

10 NEW SECTION. **Sec. 2.** DEFINITIONS. The following definitions in  
11 this section apply throughout this chapter unless the context clearly  
12 requires otherwise.

13 (1) "Beneficiary" means a person that receives property under a  
14 transfer on death deed.

15 (2) "Designated beneficiary" means a person designated to receive  
16 property in a transfer on death deed.

17 (3) "Joint owner" means an individual who owns property  
18 concurrently with one or more other individuals with a right of

1 survivorship. The term includes a joint tenant with a right to  
2 survivorship. The term does not include a tenant in common or owner of  
3 community property.

4 (4) "Person" means an individual, corporation, business trust,  
5 estate, trust, partnership, limited liability company, association,  
6 joint venture, public corporation, government or governmental  
7 subdivision, agency, or instrumentality, or any other legal or  
8 commercial entity.

9 (5) "Property" means an interest in real property located in this  
10 state which is transferable on the death of the owner.

11 (6) "Transfer on death deed" means a deed authorized under this  
12 chapter.

13 (7) "Transferor" means an individual who makes a transfer on death  
14 deed.

15 NEW SECTION. **Sec. 3.** APPLICABILITY. This chapter applies to a  
16 transfer on death deed made before, on, or after the effective date of  
17 this section by a transferor dying on or after the effective date of  
18 this section.

19 NEW SECTION. **Sec. 4.** NONEXCLUSIVITY. The chapter does not affect  
20 any method of transferring property otherwise permitted under the law  
21 of this state.

22 NEW SECTION. **Sec. 5.** TRANSFER ON DEATH DEED AUTHORIZED. An  
23 individual may transfer property to one or more beneficiaries effective  
24 at the transferor's death by a transfer on death deed. A transfer on  
25 death deed may not be used to effect a deed in lieu of foreclosure of  
26 a deed of trust.

27 NEW SECTION. **Sec. 6.** TRANSFER ON DEATH DEED REVOCABLE. A  
28 transfer on death deed is revocable even if the deed or another  
29 instrument contains a contrary provision.

30 NEW SECTION. **Sec. 7.** TRANSFER ON DEATH DEED NONTESTAMENTARY. A  
31 transfer on death deed is nontestamentary.

1        NEW SECTION.    **Sec. 8.**    CAPACITY OF TRANSFEROR.    The capacity  
2        required to make or revoke a transfer on death deed is the same as the  
3        capacity required to make a will.

4        NEW SECTION.    **Sec. 9.**    REQUIREMENTS.    A transfer on death deed:

5            (1) Except as otherwise provided in subsection (2) of this section,  
6        must contain the essential elements and formalities of a properly  
7        recordable inter vivos deed;

8            (2) Must state that the transfer to the designated beneficiary is  
9        to occur at the transferor's death; and

10            (3) Must be recorded before the transferor's death in the public  
11        records in the office of the auditor of the county where the property  
12        is located.

13        NEW SECTION.    **Sec. 10.**    NOTICE, DELIVERY, ACCEPTANCE, CONSIDERATION  
14        NOT REQUIRED.    A transfer on death deed is effective without:

15            (1) Notice or delivery to or acceptance by the designated  
16        beneficiary during the transferor's life; or

17            (2) Consideration.

18        NEW SECTION.    **Sec. 11.**    REVOCATION BY INSTRUMENT AUTHORIZED;  
19        REVOCATION BY ACT NOT PERMITTED.    (1) Subject to subsection (2) of this  
20        section, an instrument is effective to revoke a recorded transfer on  
21        death deed, or any part of it, only if the instrument:

22            (a) Is one of the following:

23                  (i) A transfer on death deed that revokes the deed or part of the  
24        deed expressly or by inconsistency;

25                  (ii) An instrument of revocation that expressly revokes the deed or  
26        part of the deed; or

27                  (iii) An inter vivos deed that expressly revokes the transfer on  
28        death deed or part of the deed; and

29            (b) Is acknowledged by the transferor after the acknowledgment of  
30        the deed being revoked and recorded before the transferor's death in  
31        the public records in the office of the county auditor of the county  
32        where the deed is recorded.

33            (2) If a transfer on death deed is made by more than one  
34        transferor:

1 (a) Revocation by a transferor does not affect the deed as to the  
2 interest of another transferor;

3 (b) A deed of joint owners is revoked only if it is revoked by all  
4 of the joint owners living at the time that the revocation is recorded;  
5 and

6 (c) A deed of community property by both spouses or by both  
7 domestic partners is revoked only if it is revoked by both of the  
8 spouses or domestic partners, provided that if only one of the spouses  
9 or domestic partners is then surviving, that spouse or domestic partner  
10 may revoke the deed.

11 (3) After a transfer on death deed is recorded, it may not be  
12 revoked by a revocatory act on the deed.

13 (4) This section does not limit the effect of an inter vivos  
14 transfer of the property.

15 NEW SECTION. **Sec. 12.** EFFECT OF TRANSFER ON DEATH DEED DURING  
16 TRANSFEROR'S LIFE. During a transferor's life, a transfer on death  
17 deed does not:

18 (1) Affect an interest or right of the transferor or any other  
19 owner, including the right to transfer or encumber the property;

20 (2) Affect an interest or right of a transferee, even if the  
21 transferee has actual or constructive notice of the deed;

22 (3) Affect an interest or right of a secured or unsecured creditor  
23 or future creditor of the transferor, even if the creditor has actual  
24 or constructive notice of the deed;

25 (4) Affect the transferor's or designated beneficiary's eligibility  
26 for any form of public assistance;

27 (5) Create a legal or equitable interest in favor of the designated  
28 beneficiary; or

29 (6) Subject the property to claims or process of a creditor of the  
30 designated beneficiary.

31 NEW SECTION. **Sec. 13.** EFFECT OF TRANSFER ON DEATH DEED AT  
32 TRANSFEROR'S DEATH. (1) Except as otherwise provided in this section,  
33 or in RCW 11.07.010, and 11.05A.030, on the death of the transferor,  
34 the following rules apply to property that is the subject of a transfer  
35 on death deed and owned by the transferor at death:

1 (a) Subject to (b) of this subsection, the interest in the property  
2 is transferred to the designated beneficiary in accordance with the  
3 deed.

4 (b) The interest of a designated beneficiary is contingent on the  
5 designated beneficiary surviving the transferor. The interest of a  
6 designated beneficiary that fails to survive the transferor lapses.

7 (c) Subject to (d) of this subsection, concurrent interests are  
8 transferred to the beneficiaries in equal and undivided shares with no  
9 right of survivorship.

10 (d) If the transferor has identified two or more designated  
11 beneficiaries to receive concurrent interests in the property, the  
12 share of one which lapses or fails for any reason is transferred to the  
13 other, or to the others in proportion to the interest of each in the  
14 remaining part of the property held concurrently.

15 (2) Subject to chapter 65.08 RCW, a beneficiary takes the property  
16 subject to all conveyances, encumbrances, assignments, contracts,  
17 mortgages, liens, and other interests to which the property is subject  
18 at the transferor's death. For purposes of this subsection and chapter  
19 65.08 RCW, the recording of the transfer on death deed is deemed to  
20 have occurred at the transferor's death.

21 (3) If a transferor is a joint owner and is:

22 (a) Survived by one or more other joint owners, the property that  
23 is the subject of a transfer on death deed belongs to the surviving  
24 joint owner or owners with right of survivorship; or

25 (b) The last surviving joint owner, the transfer on death deed is  
26 effective.

27 (4) If the property that is the subject of a transfer on death deed  
28 is community property and:

29 (a) The transferor is married and is not joined in the deed by the  
30 transferor's spouse or is in a registered domestic partnership and is  
31 not joined in the deed by the transferor's domestic partner, the  
32 transferor's interest in the property is transferred to the designated  
33 beneficiary in accordance with the deed on the transferor's death; or

34 (b) The transferor is married and is joined in the deed by the  
35 transferor's spouse, or is in a registered domestic partnership and is  
36 joined in the deed by the transferor's domestic partner, and:

37 (i) Is survived by the transferor's spouse or domestic partner, the  
38 deed is not effective upon the transferor's death; or

1 (ii) Is the surviving spouse or domestic partner, the transfer on  
2 death deed is effective on the transferor's death with respect to the  
3 transferor's interest in the property as of the time of the  
4 transferor's death.

5 (5) A transfer on death deed transfers property without covenant or  
6 warranty of title even if the deed contains a contrary provision.

7 NEW SECTION. **Sec. 14.** DISCLAIMER. A beneficiary may disclaim all  
8 or part of the beneficiary's interest as provided by chapter 11.86 RCW.

9 NEW SECTION. **Sec. 15.** LIABILITY FOR CREDITOR CLAIMS AND STATUTORY  
10 ALLOWANCES. A beneficiary of a transfer on death deed is liable for an  
11 allowed claim against the transferor's probate estate and statutory  
12 allowances to a surviving spouse and children to the extent provided in  
13 RCW 11.18.200, 11.42.085, and chapter 11.54 RCW.

14 NEW SECTION. **Sec. 16.** UNIFORMITY OF APPLICATION AND CONSTRUCTION.  
15 In applying and construing this uniform act, consideration must be  
16 given to the need to promote uniformity of the law with respect to its  
17 subject matter among the states that enact it.

18 NEW SECTION. **Sec. 17.** RELATION TO ELECTRONIC SIGNATURES IN GLOBAL  
19 AND NATIONAL COMMERCE ACT. This act modifies, limits, and supersedes  
20 the federal electronic signatures in global and national commerce act,  
21 15 U.S.C. Sec. 7001, et seq., but does not modify, limit, or supersede  
22 section 101(c) of that act, 15 U.S.C. Sec. 7001(c), or authorize  
23 electronic delivery of any of the notices described in section 103(b)  
24 of that act, 15 U.S.C. Sec. 7003(b).

25 **Sec. 18.** RCW 11.02.005 and 2011 c 327 s 1 are each reenacted and  
26 amended to read as follows:

27 When used in this title, unless otherwise required from the  
28 context:

29 (1) "Administrator" means a personal representative of the estate  
30 of a decedent and the term may be used in lieu of "personal  
31 representative" wherever required by context.

32 (2) "Codicil" means a will that modifies or partially revokes an

1 existing earlier will. A codicil need not refer to or be attached to  
2 the earlier will.

3 (3) "Degree of kinship" means the degree of kinship as computed  
4 according to the rules of the civil law; that is, by counting upward  
5 from the intestate to the nearest common ancestor and then downward to  
6 the relative, the degree of kinship being the sum of these two counts.

7 (4) "Executor" means a personal representative of the estate of a  
8 decedent appointed by will and the term may be used in lieu of  
9 "personal representative" wherever required by context.

10 (5) "Guardian" or "limited guardian" means a personal  
11 representative of the person or estate of an incompetent or disabled  
12 person as defined in RCW 11.88.010 and the term may be used in lieu of  
13 "personal representative" wherever required by context.

14 (6) "Heirs" denotes those persons, including the surviving spouse  
15 or surviving domestic partner, who are entitled under the statutes of  
16 intestate succession to the real and personal property of a decedent on  
17 the decedent's death intestate.

18 (7) "Internal revenue code" means the United States internal  
19 revenue code of 1986, as amended or renumbered as of January 1, 2001.

20 (8) "Issue" means all the lineal descendants of an individual. An  
21 adopted individual is a lineal descendant of each of his or her  
22 adoptive parents and of all individuals with regard to which each  
23 adoptive parent is a lineal descendant. A child conceived prior to the  
24 death of a parent but born after the death of the deceased parent is  
25 considered to be the surviving issue of the deceased parent for  
26 purposes of this title.

27 (9) "Net estate" refers to the real and personal property of a  
28 decedent exclusive of homestead rights, exempt property, the family  
29 allowance and enforceable claims against, and debts of, the deceased or  
30 the estate.

31 (10) "Nonprobate asset" means those rights and interests of a  
32 person having beneficial ownership of an asset that pass on the  
33 person's death under a written instrument or arrangement other than the  
34 person's will. "Nonprobate asset" includes, but is not limited to, a  
35 right or interest passing under a joint tenancy with right of  
36 survivorship, joint bank account with right of survivorship, transfer  
37 on death deed, payable on death or trust bank account, transfer on  
38 death security or security account, deed or conveyance if possession

1 has been postponed until the death of the person, trust of which the  
2 person is grantor and that becomes effective or irrevocable only upon  
3 the person's death, community property agreement, individual retirement  
4 account or bond, or note or other contract the payment or performance  
5 of which is affected by the death of the person. "Nonprobate asset"  
6 does not include: A payable-on-death provision of a life insurance  
7 policy, annuity, or other similar contract, or of an employee benefit  
8 plan; a right or interest passing by descent and distribution under  
9 chapter 11.04 RCW; a right or interest if, before death, the person has  
10 irrevocably transferred the right or interest, the person has waived  
11 the power to transfer it or, in the case of contractual arrangement,  
12 the person has waived the unilateral right to rescind or modify the  
13 arrangement; or a right or interest held by the person solely in a  
14 fiduciary capacity. For the definition of "nonprobate asset" relating  
15 to revocation of a provision for a former spouse upon dissolution of  
16 marriage or declaration of invalidity of marriage, RCW 11.07.010(5)  
17 applies. For the definition of "nonprobate asset" relating to  
18 revocation of a provision for a former spouse upon dissolution of  
19 marriage or declaration of invalidity of marriage, see RCW  
20 11.07.010(5). For the definition of "nonprobate asset" relating to  
21 testamentary disposition of nonprobate assets, see RCW 11.11.010(7).

22 (11) "Personal representative" includes executor, administrator,  
23 special administrator, and guardian or limited guardian and special  
24 representative.

25 (12) "Real estate" includes, except as otherwise specifically  
26 provided herein, all lands, tenements, and hereditaments, and all  
27 rights thereto, and all interest therein possessed and claimed in fee  
28 simple, or for the life of a third person.

29 (13) "Representation" refers to a method of determining  
30 distribution in which the takers are in unequal degrees of kinship with  
31 respect to a decedent, and is accomplished as follows: After first  
32 determining who, of those entitled to share in the estate, are in the  
33 nearest degree of kinship, the estate is divided into equal shares, the  
34 number of shares being the sum of the number of persons who survive the  
35 decedent who are in the nearest degree of kinship and the number of  
36 persons in the same degree of kinship who died before the decedent but  
37 who left issue surviving the decedent; each share of a deceased person  
38 in the nearest degree (~~shall~~) must be divided among those of the



1 deceased person's issue who survive the decedent and have no ancestor  
2 then living who is in the line of relationship between them and the  
3 decedent, those more remote in degree taking together the share which  
4 their ancestor would have taken had he or she survived the decedent.

5 (14) References to "section 2033A" of the internal revenue code in  
6 wills, trust agreements, powers of appointment, beneficiary  
7 designations, and other instruments governed by or subject to this  
8 title (~~shall be~~) are deemed to refer to the comparable or  
9 corresponding provisions of section 2057 of the internal revenue code,  
10 as added by section 6006(b) of the internal revenue service  
11 restructuring act of 1998 (H.R. 2676, P.L. 105-206); and references to  
12 the section 2033A "exclusion" (~~shall be~~) are deemed to mean the  
13 section 2057 deduction.

14 (15) "Settlor" has the same meaning as provided for "trustor" in  
15 this section.

16 (16) "Special administrator" means a personal representative of the  
17 estate of a decedent appointed for limited purposes and the term may be  
18 used in lieu of "personal representative" wherever required by context.

19 (17) "Surviving spouse" or "surviving domestic partner" does not  
20 include an individual whose marriage to or state registered domestic  
21 partnership with the decedent has been terminated, dissolved, or  
22 invalidated unless, by virtue of a subsequent marriage or state  
23 registered domestic partnership, he or she is married to or in a  
24 domestic partnership with the decedent at the time of death. A decree  
25 of separation that does not terminate the status of spouses or domestic  
26 partners is not a dissolution or invalidation for purposes of this  
27 subsection.

28 (18) "Trustee" means an original, added, or successor trustee and  
29 includes the state, or any agency thereof, when it is acting as the  
30 trustee of a trust to which chapter 11.98 RCW applies.

31 (19) "Trustor" means a person, including a testator, who creates,  
32 or contributes property to, a trust.

33 (20) "Will" means an instrument validly executed as required by RCW  
34 11.12.020.

35 Words that import the singular number may also be applied to the  
36 plural of persons and things.

37 Words importing the masculine gender only may be extended to  
38 females also.

1       **Sec. 19.** RCW 11.07.010 and 2008 c 6 s 906 are each amended to read  
2 as follows:

3       (1) This section applies to all nonprobate assets, wherever  
4 situated, held at the time of entry of a decree of dissolution of  
5 marriage or state registered domestic partnership or a declaration of  
6 invalidity or certification of termination of a state registered  
7 domestic partnership.

8       (2)(a) If a marriage or state registered domestic partnership is  
9 dissolved or invalidated, or a state registered domestic partnership  
10 terminated, a provision made prior to that event that relates to the  
11 payment or transfer at death of the decedent's interest in a nonprobate  
12 asset in favor of or granting an interest or power to the decedent's  
13 former spouse or state registered domestic partner, is revoked. A  
14 provision affected by this section must be interpreted, and the  
15 nonprobate asset affected passes, as if the former spouse or former  
16 state registered domestic partner, failed to survive the decedent,  
17 having died at the time of entry of the decree of dissolution or  
18 declaration of invalidity or termination of state registered domestic  
19 partnership.

20       (b) This subsection does not apply if and to the extent that:

21       (i) The instrument governing disposition of the nonprobate asset  
22 expressly provides otherwise;

23       (ii) The decree of dissolution, declaration of invalidity, or other  
24 court order requires that the decedent maintain a nonprobate asset for  
25 the benefit of a former spouse or former state registered domestic  
26 partner or children of the marriage or domestic partnership, payable on  
27 the decedent's death either outright or in trust, and other nonprobate  
28 assets of the decedent fulfilling such a requirement for the benefit of  
29 the former spouse or former state registered domestic partner or  
30 children of the marriage or domestic partnership do not exist at the  
31 decedent's death;

32       (iii) A court order requires that the decedent maintain a  
33 nonprobate asset for the benefit of another, payable on the decedent's  
34 death either outright or in a trust, and other nonprobate assets of the  
35 decedent fulfilling such a requirement do not exist at the decedent's  
36 death; or

37       (iv) If not for this subsection, the decedent could not have  
38 effected the revocation by unilateral action because of the terms of

1 the decree, declaration, termination of state registered domestic  
2 partnership, or for any other reason, immediately after the entry of  
3 the decree of dissolution, declaration of invalidity, or termination of  
4 state registered domestic partnership.

5 (3)(a) A payor or other third party in possession or control of a  
6 nonprobate asset at the time of the decedent's death is not liable for  
7 making a payment or transferring an interest in a nonprobate asset to  
8 a decedent's former spouse or state registered domestic partner, whose  
9 interest in the nonprobate asset is revoked under this section, or for  
10 taking another action in reliance on the validity of the instrument  
11 governing disposition of the nonprobate asset, before the payor or  
12 other third party has actual knowledge of the dissolution or other  
13 invalidation of marriage or termination of the state registered  
14 domestic partnership. A payor or other third party is liable for a  
15 payment or transfer made or other action taken after the payor or other  
16 third party has actual knowledge of a revocation under this section.

17 (b) This section does not require a payor or other third party to  
18 pay or transfer a nonprobate asset to a beneficiary designated in a  
19 governing instrument affected by the dissolution or other invalidation  
20 of marriage or termination of state registered domestic partnership, or  
21 to another person claiming an interest in the nonprobate asset, if the  
22 payor or third party has actual knowledge of the existence of a dispute  
23 between the former spouse or former state registered domestic partner,  
24 and the beneficiaries or other persons concerning rights of ownership  
25 of the nonprobate asset as a result of the application of this section  
26 among the former spouse or former state registered domestic partner,  
27 and the beneficiaries or among other persons, or if the payor or third  
28 party is otherwise uncertain as to who is entitled to the nonprobate  
29 asset under this section. In such a case, the payor or third party  
30 may, without liability, notify in writing all beneficiaries or other  
31 persons claiming an interest in the nonprobate asset of either the  
32 existence of the dispute or its uncertainty as to who is entitled to  
33 payment or transfer of the nonprobate asset. The payor or third party  
34 may also, without liability, refuse to pay or transfer a nonprobate  
35 asset in such a circumstance to a beneficiary or other person claiming  
36 an interest until the time that either:

37 (i) All beneficiaries and other interested persons claiming an  
38 interest have consented in writing to the payment or transfer; or

1 (ii) The payment or transfer is authorized or directed by a court  
2 of proper jurisdiction.

3 (c) Notwithstanding subsections (1) and (2) of this section and (a)  
4 and (b) of this subsection, a payor or other third party having actual  
5 knowledge of the existence of a dispute between beneficiaries or other  
6 persons concerning rights to a nonprobate asset as a result of the  
7 application of this section may condition the payment or transfer of  
8 the nonprobate asset on execution, in a form and with security  
9 acceptable to the payor or other third party, of a bond in an amount  
10 that is double the fair market value of the nonprobate asset at the  
11 time of the decedent's death or the amount of an adverse claim,  
12 whichever is the lesser, or of a similar instrument to provide security  
13 to the payor or other third party, indemnifying the payor or other  
14 third party for any liability, loss, damage, costs, and expenses for  
15 and on account of payment or transfer of the nonprobate asset.

16 (d) As used in this subsection, "actual knowledge" means, for a  
17 payor or other third party in possession or control of the nonprobate  
18 asset at or following the decedent's death, written notice to the payor  
19 or other third party, or to an officer of a payor or third party in the  
20 course of his or her employment, received after the decedent's death  
21 and within a time that is sufficient to afford the payor or third party  
22 a reasonable opportunity to act upon the knowledge. The notice must  
23 identify the nonprobate asset with reasonable specificity. The notice  
24 also must be sufficient to inform the payor or other third party of the  
25 revocation of the provisions in favor of the decedent's spouse or state  
26 registered domestic partner, by reason of the dissolution or  
27 invalidation of marriage or termination of state registered domestic  
28 partnership, or to inform the payor or third party of a dispute  
29 concerning rights to a nonprobate asset as a result of the application  
30 of this section. Receipt of the notice for a period of more than  
31 thirty days is presumed to be received within a time that is sufficient  
32 to afford the payor or third party a reasonable opportunity to act upon  
33 the knowledge, but receipt of the notice for a period of less than five  
34 business days is presumed not to be a sufficient time for these  
35 purposes. These presumptions may be rebutted only by clear and  
36 convincing evidence to the contrary.

37 (4)(a) A person who purchases a nonprobate asset from a former  
38 spouse, former state registered domestic partner, or other person, for

1 value and without actual knowledge, or who receives from a former  
2 spouse, former state registered domestic partner, or other person  
3 payment or transfer of a nonprobate asset without actual knowledge and  
4 in partial or full satisfaction of a legally enforceable obligation, is  
5 neither obligated under this section to return the payment, property,  
6 or benefit nor is liable under this section for the amount of the  
7 payment or the value of the nonprobate asset. However, a former  
8 spouse, former state registered domestic partner, or other person who,  
9 with actual knowledge, not for value, or not in satisfaction of a  
10 legally enforceable obligation, receives payment or transfer of a  
11 nonprobate asset to which that person is not entitled under this  
12 section is obligated to return the payment or nonprobate asset, or is  
13 personally liable for the amount of the payment or value of the  
14 nonprobate asset, to the person who is entitled to it under this  
15 section.

16 (b) As used in this subsection, "actual knowledge" means, for a  
17 person described in (a) of this subsection who purchases or receives a  
18 nonprobate asset from a former spouse, former state registered domestic  
19 partner, or other person, personal knowledge or possession of documents  
20 relating to the revocation upon dissolution or invalidation of marriage  
21 of provisions relating to the payment or transfer at the decedent's  
22 death of the nonprobate asset, received within a time after the  
23 decedent's death and before the purchase or receipt that is sufficient  
24 to afford the person purchasing or receiving the nonprobate asset  
25 reasonable opportunity to act upon the knowledge. Receipt of the  
26 personal knowledge or possession of the documents for a period of more  
27 than thirty days is presumed to be received within a time that is  
28 sufficient to afford the payor or third party a reasonable opportunity  
29 to act upon the knowledge, but receipt of the notice for a period of  
30 less than five business days is presumed not to be a sufficient time  
31 for these purposes. These presumptions may be rebutted only by clear  
32 and convincing evidence to the contrary.

33 (5)(a) As used in this section, "nonprobate asset" means those  
34 rights and interests of a person having beneficial ownership of an  
35 asset that pass on the person's death under only the following written  
36 instruments or arrangements other than the decedent's will:

37 ((+a)) (i) A payable-on-death provision of a life insurance

1 policy, employee benefit plan, annuity or similar contract, or  
2 individual retirement account, unless provided otherwise by controlling  
3 federal law;

4 ~~((b))~~ (ii) A payable-on-death, trust, or joint with right of  
5 survivorship bank account;

6 ~~((c))~~ (iii) A trust of which the person is a grantor and that  
7 becomes effective or irrevocable only upon the person's death;

8 ~~((d))~~ (iv) Transfer on death beneficiary designations of a  
9 transfer on death or pay on death security, or joint tenancy or joint  
10 tenancy with right of survivorship designations of a security, if such  
11 designations are authorized under Washington law;

12 ~~((e))~~ (v) A transfer on death, pay on death, joint tenancy, or  
13 joint tenancy with right of survivorship brokerage account;

14 ~~((f))~~ (vi) A transfer on death deed;

15 (vii) Unless otherwise specifically provided therein, a contract  
16 wherein payment or performance under that contract is affected by the  
17 death of the person; or

18 ~~((g))~~ (viii) Unless otherwise specifically provided therein, any  
19 other written instrument of transfer, within the meaning of RCW  
20 11.02.091(3), containing a provision for the nonprobate transfer of an  
21 asset at death.

22 (b) For the general definition in this title of "nonprobate asset,"  
23 see RCW 11.02.005~~((15))~~ (10) and for the definition of "nonprobate  
24 asset" relating to testamentary disposition of nonprobate assets, see  
25 RCW 11.11.010(7). For the purposes of this chapter, a "bank account"  
26 includes an account into or from which cash deposits and withdrawals  
27 can be made, and includes demand deposit accounts, time deposit  
28 accounts, money market accounts, or certificates of deposit, maintained  
29 at a bank, savings and loan association, credit union, brokerage house,  
30 or similar financial institution.

31 (6) This section is remedial in nature and applies as of July 25,  
32 1993, to decrees of dissolution and declarations of invalidity entered  
33 after July 24, 1993, and this section applies as of January 1, 1995, to  
34 decrees of dissolution and declarations of invalidity entered before  
35 July 25, 1993.

36 **Sec. 20.** RCW 11.11.010 and 2008 c 6 s 909 are each amended to read  
37 as follows:

1 The definitions in this section apply throughout this chapter  
2 unless the context clearly requires otherwise.

3 (1)(a) "Actual knowledge" means:

4 (i) For a financial institution, whether acting as personal  
5 representative or otherwise, or other third party in possession or  
6 control of a nonprobate asset, receipt of written notice that: (A)  
7 Complies with RCW 11.11.050; (B) pertains to the testamentary  
8 disposition or ownership of a nonprobate asset in its possession or  
9 control; and (C) is received by the financial institution or third  
10 party after the death of the owner in a time sufficient to afford the  
11 financial institution or third party a reasonable opportunity to act  
12 upon the knowledge; and

13 (ii) For a personal representative that is not a financial  
14 institution, personal knowledge or possession of documents relating to  
15 the testamentary disposition or ownership of a nonprobate asset of the  
16 owner sufficient to afford the personal representative reasonable  
17 opportunity to act upon the knowledge, including reasonable opportunity  
18 for the personal representative to provide the written notice under RCW  
19 11.11.050.

20 (b) For the purposes of (a) of this subsection, notice of more than  
21 thirty days is presumed to be notice that is sufficient to afford the  
22 party a reasonable opportunity to act upon the knowledge, but notice of  
23 less than five business days is presumed not to be a sufficient notice  
24 for these purposes. These presumptions may be rebutted only by clear  
25 and convincing evidence to the contrary.

26 (2) "Beneficiary" means the person designated to receive a  
27 nonprobate asset upon the death of the owner by means other than the  
28 owner's will.

29 (3) "Broker" means a person defined as a broker or dealer under the  
30 federal securities laws.

31 (4) "Date of will" means, as to any nonprobate asset, the date of  
32 signature of the will or codicil that refers to the asset and disposes  
33 of it.

34 (5) "Designate" means a written means by which the owner selects a  
35 beneficiary, including but not limited to instruments under contractual  
36 arrangements and registration of accounts, and "designation" means the  
37 selection.

1 (6) "Financial institution" means: A bank, trust company, mutual  
2 savings bank, savings and loan association, credit union, broker, or  
3 issuer of stock or its transfer agent.

4 (7)(a) "Nonprobate asset" means a nonprobate asset within the  
5 meaning of RCW 11.02.005, but excluding the following:

6 (i) A right or interest in real property passing under a joint  
7 tenancy with right of survivorship;

8 (ii) A deed or conveyance for which possession has been postponed  
9 until the death of the owner;

10 (iii) A transfer on death deed;

11 (iv) A right or interest passing under a community property  
12 agreement; and

13 ~~((iv))~~ (v) An individual retirement account or bond.

14 (b) For the definition of "nonprobate asset" relating to revocation  
15 of a provision for a former spouse or former domestic partner upon  
16 dissolution of marriage or state registered domestic partnership or  
17 declaration of invalidity of marriage or state registered domestic  
18 partnership, see RCW 11.07.010(5).

19 (8) "Owner" means a person who, during life, has beneficial  
20 ownership of the nonprobate asset.

21 (9) "Request" means a request by the beneficiary for transfer of a  
22 nonprobate asset after the death of the owner, if it complies with all  
23 conditions of the arrangement, including reasonable special  
24 requirements concerning necessary signatures and regulations of the  
25 financial institution or other third party, or by the personal  
26 representative of the owner's estate or the testamentary beneficiary,  
27 if it complies with the owner's will and any additional conditions of  
28 the financial institution or third party for such transfer.

29 (10) "Testamentary beneficiary" means a person named under the  
30 owner's will to receive a nonprobate asset under this chapter,  
31 including but not limited to the trustee of a testamentary trust.

32 (11) "Third party" means a person, including a financial  
33 institution, having possession of or control over a nonprobate asset at  
34 the death of the owner, including the trustee of a revocable living  
35 trust and surviving joint tenant or tenants.

36 **Sec. 21.** RCW 11.18.200 and 1999 c 42 s 605 are each amended to  
37 read as follows:



1 (1) Unless expressly exempted by statute, a beneficiary of a  
2 nonprobate asset that was subject to satisfaction of the decedent's  
3 general liabilities immediately before the decedent's death takes the  
4 asset subject to liabilities, claims, estate taxes, and the fair share  
5 of expenses of administration reasonably incurred by the personal  
6 representative in the transfer of or administration upon the asset.  
7 The beneficiary of such an asset is liable to account to the personal  
8 representative to the extent necessary to satisfy liabilities, claims,  
9 the asset's fair share of expenses of administration, and the asset's  
10 share of any applicable estate taxes under chapter (~~83.110~~) 83.110A  
11 RCW. Before making demand that a beneficiary of a nonprobate asset  
12 account to the personal representative, the personal representative  
13 (~~shall~~) must give notice to the beneficiary, in the manner provided  
14 in chapter 11.96A RCW, that the beneficiary is liable to account under  
15 this section.

16 (2) The following rules govern in applying subsection (1) of this  
17 section:

18 (a) A beneficiary of property passing at death under a community  
19 property agreement takes the property subject to the decedent's  
20 liabilities, claims, estate taxes, and administration expenses as  
21 described in subsection (1) of this section. However, assets existing  
22 as community or separate property immediately before the decedent's  
23 death under the community property agreement are subject to the  
24 decedent's liabilities and claims to the same extent that they would  
25 have been had they been assets of the probate estate.

26 (b) A beneficiary of property held in joint tenancy form with right  
27 of survivorship, including without limitation United States savings  
28 bonds or similar obligations, takes the property subject to the  
29 decedent's liabilities, claims, estate taxes, and administration  
30 expenses as described in subsection (1) of this section to the extent  
31 of the decedent's beneficial ownership interest in the property  
32 immediately before death.

33 (c) A beneficiary of payable-on-death or trust bank accounts,  
34 bonds, securities, or similar obligations, including without limitation  
35 United States bonds or similar obligations, takes the property subject  
36 to the decedent's liabilities, claims, estate taxes, and administration  
37 expenses as described in subsection (1) of this section, to the extent

1 of the decedent's beneficial ownership interest in the property  
2 immediately before death.

3 (d) A beneficiary of a transfer on death deed or of deeds or  
4 conveyances made by the decedent if possession has been postponed until  
5 the death of the decedent takes the property subject to the decedent's  
6 liabilities, claims, estate taxes, and administration expenses as  
7 described in subsection (1) of this section, to the extent of the  
8 decedent's beneficial ownership interest in the property immediately  
9 before death.

10 (e) A trust for the decedent's use of which the decedent is the  
11 grantor is subject to the decedent's liabilities, claims, estate taxes,  
12 and administration expenses as described in subsection (1) of this  
13 section, to the same extent as the trust was subject to claims of the  
14 decedent's creditors immediately before death under RCW 19.36.020.

15 (f) A trust not for the use of the grantor but of which the  
16 decedent is the grantor and that becomes effective or irrevocable only  
17 upon the decedent's death is subject to the decedent's claims,  
18 liabilities, estate taxes, and expenses of administration as described  
19 in subsection (1) of this section.

20 (g) Anything in this section to the contrary notwithstanding,  
21 nonprobate assets that existed as community property immediately before  
22 the decedent's death are subject to the decedent's liabilities and  
23 claims to the same extent that they would have been had they been  
24 assets of the probate estate.

25 (h) The liability of a beneficiary of life insurance is governed by  
26 chapter 48.18 RCW.

27 (i) The liability of a beneficiary of pension or retirement  
28 employee benefits is governed by chapter 6.15 RCW.

29 (j) An inference may not be drawn from (a) through (i) of this  
30 subsection that a beneficiary of nonprobate assets other than those  
31 assets specifically described in (a) through (i) of this subsection  
32 does or does not take the assets subject to claims, liabilities, estate  
33 taxes, and administration expenses as described in subsection (1) of  
34 this section.

35 (3) Nothing in this section derogates from the rights of a person  
36 interested in the estate to recover any applicable estate tax under  
37 chapter ((83.110)) 83.110A RCW or from the liability of any beneficiary  
38 for estate tax under chapter ((83.110)) 83.110A RCW.

1 (4) Nonprobate assets that may be responsible for the satisfaction  
2 of the decedent's general liabilities and claims abate together with  
3 the probate assets of the estate in accord with chapter 11.10 RCW.

4 **Sec. 22.** RCW 11.86.011 and 1989 c 34 s 1 are each amended to read  
5 as follows:

6 Unless the context clearly requires otherwise, the definitions in  
7 this section apply throughout this chapter.

8 (1) "Beneficiary" means the person entitled, but for the person's  
9 disclaimer, to take an interest.

10 (2) "Interest" includes the whole of any property, real or  
11 personal, legal or equitable, or any fractional part, share, or  
12 particular portion or specific assets thereof, any vested or contingent  
13 interest in any such property, any power to appoint, consume, apply, or  
14 expend property, or any other right, power, privilege, or immunity  
15 relating to property. "Interest" includes, but is not limited to, an  
16 interest created in any of the following manners:

- 17 (a) By intestate succession;
- 18 (b) Under a will;
- 19 (c) Under a trust;
- 20 (d) By succession to a disclaimed interest;
- 21 (e) By virtue of an election to take against a will;
- 22 (f) By creation of a power of appointment;
- 23 (g) By exercise or nonexercise of a power of appointment;
- 24 (h) By an inter vivos gift, whether outright or in trust;
- 25 (i) By surviving the death of a depositor of a trust or P.O.D.  
26 account within the meaning of RCW 30.22.040;
- 27 (j) Under an insurance or annuity contract;
- 28 (k) By surviving the death of another joint tenant;
- 29 (l) Under an employee benefit plan;
- 30 (m) Under an individual retirement account, annuity, or bond;
- 31 (n) Under a community property agreement; (~~or~~)
- 32 (o) By surviving the death of a transferor of a transfer on death  
33 deed; or
- 34 (p) Any other interest created by any testamentary or inter vivos  
35 instrument or by operation of law.

36 (3) "Creator of the interest" means a person who establishes,  
37 declares, or otherwise creates an interest.

1 (4) "Disclaimer" means any writing which declines, refuses,  
2 renounces, or disclaims any interest that would otherwise be taken by  
3 a beneficiary.

4 (5) "Disclaimant" means a beneficiary who executes a disclaimer on  
5 his or her own behalf or a person who executes a disclaimer on behalf  
6 of a beneficiary.

7 (6) "Person" means an individual, corporation, government,  
8 governmental subdivision or agency, business trust, estate, trust,  
9 partnership, association, or other entity.

10 (7)(a) "Date of the transfer" means:

11 ((+a)) (i) For an inter vivos transfer, the date of the creation  
12 of the interest; or

13 ((+b)) (ii) For a transfer upon the death of the creator of the  
14 interest, the date of the death of the creator.

15 (b) A joint tenancy interest of a deceased joint tenant ((shall  
16 be)) is deemed to be transferred at the death of the joint tenant  
17 rather than at the creation of the joint tenancy.

18 **Sec. 23.** RCW 11.94.050 and 2011 c 327 s 4 are each amended to read  
19 as follows:

20 (1) Although a designated attorney-in-fact or agent has all powers  
21 of absolute ownership of the principal, or the document has language to  
22 indicate that the attorney-in-fact or agent ((shall have)) has all the  
23 powers the principal would have if alive and competent, the attorney-  
24 in-fact or agent ((shall)) does not have the power to make, amend,  
25 alter, or revoke the principal's wills or codicils, and ((shall)) does  
26 not have the power, unless specifically provided otherwise in the  
27 document: To make, amend, alter, or revoke any of the principal's life  
28 insurance, annuity, or similar contract beneficiary designations,  
29 employee benefit plan beneficiary designations, trust agreements,  
30 registration of the principal's securities in beneficiary form, payable  
31 on death or transfer on death beneficiary designations, designation of  
32 persons as joint tenants with right of survivorship with the principal  
33 with respect to any of the principal's property, community property  
34 agreements, transfer on death deeds, or any other provisions for  
35 nonprobate transfer at death contained in nontestamentary instruments  
36 described in RCW 11.02.091; to make any gifts of property owned by the  
37 principal; to exercise the principal's rights to distribute property in

1 trust or cause a trustee to distribute property in trust to the extent  
2 consistent with the terms of the trust agreement; to make transfers of  
3 property to any trust (whether or not created by the principal) unless  
4 the trust benefits the principal alone and does not have dispositive  
5 provisions which are different from those which would have governed the  
6 property had it not been transferred into the trust; or to disclaim  
7 property.

8 (2) Nothing in subsection (1) of this section prohibits an  
9 attorney-in-fact or agent from making any transfer of resources not  
10 prohibited under chapter 74.09 RCW when the transfer is for the purpose  
11 of qualifying the principal for medical assistance or the limited  
12 casualty program for the medically needy.

13 **Sec. 24.** RCW 82.45.010 and 2010 1st sp.s. c 23 s 207 are each  
14 amended to read as follows:

15 (1) As used in this chapter, the term "sale" has its ordinary  
16 meaning and includes any conveyance, grant, assignment, quitclaim, or  
17 transfer of the ownership of or title to real property, including  
18 standing timber, or any estate or interest therein for a valuable  
19 consideration, and any contract for such conveyance, grant, assignment,  
20 quitclaim, or transfer, and any lease with an option to purchase real  
21 property, including standing timber, or any estate or interest therein  
22 or other contract under which possession of the property is given to  
23 the purchaser, or any other person at the purchaser's direction, and  
24 title to the property is retained by the vendor as security for the  
25 payment of the purchase price. The term also includes the grant,  
26 assignment, quitclaim, sale, or transfer of improvements constructed  
27 upon leased land.

28 (2)(a) The term "sale" also includes the transfer or acquisition  
29 within any twelve-month period of a controlling interest in any entity  
30 with an interest in real property located in this state for a valuable  
31 consideration.

32 (b) For the sole purpose of determining whether, pursuant to the  
33 exercise of an option, a controlling interest was transferred or  
34 acquired within a twelve-month period, the date that the option  
35 agreement was executed is the date on which the transfer or acquisition  
36 of the controlling interest is deemed to occur. For all other purposes

1 under this chapter, the date upon which the option is exercised is the  
2 date of the transfer or acquisition of the controlling interest.

3 (c) For purposes of this subsection, all acquisitions of persons  
4 acting in concert must be aggregated for purposes of determining  
5 whether a transfer or acquisition of a controlling interest has taken  
6 place. The department must adopt standards by rule to determine when  
7 persons are acting in concert. In adopting a rule for this purpose,  
8 the department must consider the following:

9 (i) Persons must be treated as acting in concert when they have a  
10 relationship with each other such that one person influences or  
11 controls the actions of another through common ownership; and

12 (ii) When persons are not commonly owned or controlled, they must  
13 be treated as acting in concert only when the unity with which the  
14 purchasers have negotiated and will consummate the transfer of  
15 ownership interests supports a finding that they are acting as a single  
16 entity. If the acquisitions are completely independent, with each  
17 purchaser buying without regard to the identity of the other  
18 purchasers, then the acquisitions are considered separate acquisitions.

19 (3) The term "sale" does not include:

20 (a) A transfer by gift, devise, or inheritance.

21 (b) A transfer by transfer on death deed, to the extent that it is  
22 not in satisfaction of a contractual obligation of the decedent owed to  
23 the recipient of the property.

24 (c) A transfer of any leasehold interest other than of the type  
25 mentioned above.

26 ~~((e))~~ (d) A cancellation or forfeiture of a vendee's interest in  
27 a contract for the sale of real property, whether or not such contract  
28 contains a forfeiture clause, or deed in lieu of foreclosure of a  
29 mortgage.

30 ~~((d))~~ (e) The partition of property by tenants in common by  
31 agreement or as the result of a court decree.

32 ~~((e))~~ (f) The assignment of property or interest in property from  
33 one spouse or one domestic partner to the other spouse or other  
34 domestic partner in accordance with the terms of a decree of  
35 dissolution of marriage or state registered domestic partnership or in  
36 fulfillment of a property settlement agreement.

37 ~~((f))~~ (g) The assignment or other transfer of a vendor's interest

1 in a contract for the sale of real property, even though accompanied by  
2 a conveyance of the vendor's interest in the real property involved.

3 ~~((g))~~ (h) Transfers by appropriation or decree in condemnation  
4 proceedings brought by the United States, the state or any political  
5 subdivision thereof, or a municipal corporation.

6 ~~((h))~~ (i) A mortgage or other transfer of an interest in real  
7 property merely to secure a debt, or the assignment thereof.

8 ~~((i))~~ (j) Any transfer or conveyance made pursuant to a deed of  
9 trust or an order of sale by the court in any mortgage, deed of trust,  
10 or lien foreclosure proceeding or upon execution of a judgment, or deed  
11 in lieu of foreclosure to satisfy a mortgage or deed of trust.

12 ~~((j))~~ (k) A conveyance to the federal housing administration or  
13 veterans administration by an authorized mortgagee made pursuant to a  
14 contract of insurance or guaranty with the federal housing  
15 administration or veterans administration.

16 ~~((k))~~ (l) A transfer in compliance with the terms of any lease or  
17 contract upon which the tax as imposed by this chapter has been paid or  
18 where the lease or contract was entered into prior to the date this tax  
19 was first imposed.

20 ~~((l))~~ (m) The sale of any grave or lot in an established  
21 cemetery.

22 ~~((m))~~ (n) A sale by the United States, this state or any  
23 political subdivision thereof, or a municipal corporation of this  
24 state.

25 ~~((n))~~ (o) A sale to a regional transit authority or public  
26 corporation under RCW 81.112.320 under a sale/leaseback agreement under  
27 RCW 81.112.300.

28 ~~((o))~~ (p) A transfer of real property, however effected, if it  
29 consists of a mere change in identity or form of ownership of an entity  
30 where there is no change in the beneficial ownership. These include  
31 transfers to a corporation or partnership which is wholly owned by the  
32 transferor and/or the transferor's spouse or domestic partner or  
33 children of the transferor or the transferor's spouse or domestic  
34 partner. However, if thereafter such transferee corporation or  
35 partnership voluntarily transfers such real property, or such  
36 transferor, spouse or domestic partner, or children of the transferor  
37 or the transferor's spouse or domestic partner voluntarily transfer  
38 stock in the transferee corporation or interest in the transferee

1 partnership capital, as the case may be, to other than (i) the  
2 transferor and/or the transferor's spouse or domestic partner or  
3 children of the transferor or the transferor's spouse or domestic  
4 partner, (ii) a trust having the transferor and/or the transferor's  
5 spouse or domestic partner or children of the transferor or the  
6 transferor's spouse or domestic partner as the only beneficiaries at  
7 the time of the transfer to the trust, or (iii) a corporation or  
8 partnership wholly owned by the original transferor and/or the  
9 transferor's spouse or domestic partner or children of the transferor  
10 or the transferor's spouse or domestic partner, within three years of  
11 the original transfer to which this exemption applies, and the tax on  
12 the subsequent transfer has not been paid within sixty days of becoming  
13 due, excise taxes become due and payable on the original transfer as  
14 otherwise provided by law.

15 ~~((p))~~ (q)(i) A transfer that for federal income tax purposes does  
16 not involve the recognition of gain or loss for entity formation,  
17 liquidation or dissolution, and reorganization, including but not  
18 limited to nonrecognition of gain or loss because of application of 26  
19 U.S.C. Sec. 332, 337, 351, 368(a)(1), 721, or 731 of the internal  
20 revenue code of 1986, as amended.

21 (ii) However, the transfer described in ~~((p))~~ (q)(i) of this  
22 subsection cannot be preceded or followed within a twelve-month period  
23 by another transfer or series of transfers, that, when combined with  
24 the otherwise exempt transfer or transfers described in ~~((p))~~ (q)(i)  
25 of this subsection, results in the transfer of a controlling interest  
26 in the entity for valuable consideration, and in which one or more  
27 persons previously holding a controlling interest in the entity receive  
28 cash or property in exchange for any interest the person or persons  
29 acting in concert hold in the entity. This subsection (3)~~((p))~~  
30 (q)(ii) does not apply to that part of the transfer involving property  
31 received that is the real property interest that the person or persons  
32 originally contributed to the entity or when one or more persons who  
33 did not contribute real property or belong to the entity at a time when  
34 real property was purchased receive cash or personal property in  
35 exchange for that person or persons' interest in the entity. The real  
36 estate excise tax under this subsection (3)~~((p))~~ (q)(ii) is imposed  
37 upon the person or persons who previously held a controlling interest  
38 in the entity.



1        ~~((g))~~ (r) A qualified sale of a manufactured/mobile home  
2 community, as defined in RCW 59.20.030, that takes place on or after  
3 June 12, 2008, but before December 31, 2018.

4        **Sec. 25.** RCW 82.45.197 and 2008 c 269 s 1 are each amended to read  
5 as follows:

6        In order to receive an exemption from the tax in this chapter on  
7 real property transferred as a result of inheritance under RCW  
8 82.45.010(3)(a), the following documentation must be provided:

9        (1) If the property is being transferred under the terms of a  
10 community property agreement, a copy of the recorded agreement and a  
11 certified copy of the death certificate;

12        (2) If the property is being transferred under the terms of a trust  
13 instrument, a certified copy of the death certificate and a copy of the  
14 trust instrument showing the authority of the grantor;

15        (3) If the property is being transferred under the terms of a  
16 probated will, a certified copy of the letters testamentary or in the  
17 case of intestate administration, a certified copy of the letters of  
18 administration showing that the grantor is the court-appointed  
19 executor, executrix, or administrator, and a certified copy of the  
20 death certificate;

21        (4) In the case of joint tenants with right of survivorship and  
22 remainder interests, a certified copy of the death certificate is  
23 recorded to perfect title;

24        (5) If the property is being transferred pursuant to a court order,  
25 a certified copy of the court order requiring the transfer, and  
26 confirming that the grantor is required to do so under the terms of the  
27 order; ~~((e))~~

28        (6) If the community property interest of the decedent is being  
29 transferred to a surviving spouse or surviving domestic partner absent  
30 the documentation set forth in subsections (1) through (5) of this  
31 section, a certified copy of the death certificate and a signed  
32 affidavit from the surviving spouse or surviving domestic partner  
33 affirming that he or she is the sole and rightful heir to the property;  
34 or

35        (7) If the property is being transferred pursuant to a transfer on  
36 death deed, a certified copy of the death certificate is recorded to  
37 perfect title.

1       **Sec. 26.** RCW 82.45.150 and 1996 c 149 s 6 are each amended to read  
2 as follows:

3       All of chapter 82.32 RCW, except RCW 82.32.030, 82.32.050,  
4 82.32.140, 82.32.270, and 82.32.090 (1) and (~~(+8)~~) (10), applies to  
5 the tax imposed by this chapter, in addition to any other provisions of  
6 law for the payment and enforcement of the tax imposed by this chapter.  
7 The department of revenue (~~(shall)~~) must by rule provide for the  
8 effective administration of this chapter. The rules (~~(shall)~~) must  
9 prescribe and furnish a real estate excise tax affidavit form verified  
10 by both the seller and the buyer, or agents of each, to be used by each  
11 county, or the department, as the case may be, in the collection of the  
12 tax imposed by this chapter, except that an affidavit given in  
13 connection with grant of an easement or right-of-way to a gas,  
14 electrical, or telecommunications company, as defined in RCW 80.04.010,  
15 or to a public utility district or cooperative that distributes  
16 electricity, need be verified only on behalf of the company, district,  
17 or cooperative and except that a transfer on death deed need be  
18 verified only on behalf of the transferor. The department of revenue  
19 (~~(shall)~~) must annually conduct audits of transactions and affidavits  
20 filed under this chapter.

21       **Sec. 27.** RCW 84.33.140 and 2012 c 170 s 1 are each amended to read  
22 as follows:

23       (1) When land has been designated as forest land under RCW  
24 84.33.130, a notation of the designation must be made each year upon  
25 the assessment and tax rolls. A copy of the notice of approval  
26 together with the legal description or assessor's parcel numbers for  
27 the land must, at the expense of the applicant, be filed by the  
28 assessor in the same manner as deeds are recorded.

29       (2) In preparing the assessment roll as of January 1, 2002, for  
30 taxes payable in 2003 and each January 1st thereafter, the assessor  
31 must list each parcel of designated forest land at a value with respect  
32 to the grade and class provided in this subsection and adjusted as  
33 provided in subsection (3) of this section. The assessor must compute  
34 the assessed value of the land using the same assessment ratio applied  
35 generally in computing the assessed value of other property in the  
36 county. Values for the several grades of bare forest land are as  
37 follows:

	LAND	OPERABILITY	VALUES
	GRADE	CLASS	PER ACRE
1		1	\$234
2		2	229
3		3	217
4	1	4	157
5		1	198
6		2	190
7	2	3	183
8		4	132
9		1	154
10		2	149
11	3	3	148
12		4	113
13		1	117
14		2	114
15	4	3	113
16		4	86
17		1	85
18		2	78
19	5	3	77
20		4	52
21		1	43
22		2	39
23	6	3	39
24		4	37
25		1	21
26		2	21
27	7	3	20
28		4	20
29			
30	8		1
31			

32 (3) On or before December 31, 2001, the department must adjust by  
33 rule under chapter 34.05 RCW, the forest land values contained in  
34 subsection (2) of this section in accordance with this subsection, and  
35 must certify the adjusted values to the assessor who will use these

1 values in preparing the assessment roll as of January 1, 2002. For the  
2 adjustment to be made on or before December 31, 2001, for use in the  
3 2002 assessment year, the department must:

4 (a) Divide the aggregate value of all timber harvested within the  
5 state between July 1, 1996, and June 30, 2001, by the aggregate harvest  
6 volume for the same period, as determined from the harvester excise tax  
7 returns filed with the department under RCW 84.33.074; and

8 (b) Divide the aggregate value of all timber harvested within the  
9 state between July 1, 1995, and June 30, 2000, by the aggregate harvest  
10 volume for the same period, as determined from the harvester excise tax  
11 returns filed with the department under RCW 84.33.074; and

12 (c) Adjust the forest land values contained in subsection (2) of  
13 this section by a percentage equal to one-half of the percentage change  
14 in the average values of harvested timber reflected by comparing the  
15 resultant values calculated under (a) and (b) of this subsection.

16 (4) For the adjustments to be made on or before December 31, 2002,  
17 and each succeeding year thereafter, the same procedure described in  
18 subsection (3) of this section must be followed using harvester excise  
19 tax returns filed under RCW 84.33.074. However, this adjustment must  
20 be made to the prior year's adjusted value, and the five-year periods  
21 for calculating average harvested timber values must be successively  
22 one year more recent.

23 (5) Land graded, assessed, and valued as forest land must continue  
24 to be so graded, assessed, and valued until removal of designation by  
25 the assessor upon the occurrence of any of the following:

26 (a) Receipt of notice from the owner to remove the designation;

27 (b) Sale or transfer to an ownership making the land exempt from ad  
28 valorem taxation;

29 (c) Sale or transfer of all or a portion of the land to a new  
30 owner, unless the new owner has signed a notice of forest land  
31 designation continuance, except transfer to an owner who is an heir or  
32 devisee of a deceased owner or transfer by a transfer on death deed,  
33 does not, by itself, result in removal of designation. The signed  
34 notice of continuance must be attached to the real estate excise tax  
35 affidavit provided for in RCW 82.45.150. The notice of continuance  
36 must be on a form prepared by the department. If the notice of  
37 continuance is not signed by the new owner and attached to the real  
38 estate excise tax affidavit, all compensating taxes calculated under

1 subsection (11) of this section are due and payable by the seller or  
2 transferor at time of sale. The auditor may not accept an instrument  
3 of conveyance regarding designated forest land for filing or recording  
4 unless the new owner has signed the notice of continuance or the  
5 compensating tax has been paid, as evidenced by the real estate excise  
6 tax stamp affixed thereto by the treasurer. The seller, transferor, or  
7 new owner may appeal the new assessed valuation calculated under  
8 subsection (11) of this section to the county board of equalization in  
9 accordance with the provisions of RCW 84.40.038. Jurisdiction is  
10 hereby conferred on the county board of equalization to hear these  
11 appeals;

12 (d) Determination by the assessor, after giving the owner written  
13 notice and an opportunity to be heard, that:

14 (i) The land is no longer primarily devoted to and used for growing  
15 and harvesting timber. However, land may not be removed from  
16 designation if a governmental agency, organization, or other recipient  
17 identified in subsection (13) or (14) of this section as exempt from  
18 the payment of compensating tax has manifested its intent in writing or  
19 by other official action to acquire a property interest in the  
20 designated forest land by means of a transaction that qualifies for an  
21 exemption under subsection (13) or (14) of this section. The  
22 governmental agency, organization, or recipient must annually provide  
23 the assessor of the county in which the land is located reasonable  
24 evidence in writing of the intent to acquire the designated land as  
25 long as the intent continues or within sixty days of a request by the  
26 assessor. The assessor may not request this evidence more than once in  
27 a calendar year;

28 (ii) The owner has failed to comply with a final administrative or  
29 judicial order with respect to a violation of the restocking, forest  
30 management, fire protection, insect and disease control, and forest  
31 debris provisions of Title 76 RCW or any applicable rules under Title  
32 76 RCW; or

33 (iii) Restocking has not occurred to the extent or within the time  
34 specified in the application for designation of such land.

35 (6) Land may not be removed from designation if there is a  
36 governmental restriction that prohibits, in whole or in part, the owner  
37 from harvesting timber from the owner's designated forest land. If  
38 only a portion of the parcel is impacted by governmental restrictions

1 of this nature, the restrictions cannot be used as a basis to remove  
2 the remainder of the forest land from designation under this chapter.  
3 For the purposes of this section, "governmental restrictions" includes:  
4 (a) Any law, regulation, rule, ordinance, program, or other action  
5 adopted or taken by a federal, state, county, city, or other  
6 governmental entity; or (b) the land's zoning or its presence within an  
7 urban growth area designated under RCW 36.70A.110.

8 (7) The assessor has the option of requiring an owner of forest  
9 land to file a timber management plan with the assessor upon the  
10 occurrence of one of the following:

- 11 (a) An application for designation as forest land is submitted; or
- 12 (b) Designated forest land is sold or transferred and a notice of  
13 continuance, described in subsection (5)(c) of this section, is signed.

14 (8) If land is removed from designation because of any of the  
15 circumstances listed in subsection (5)(a) through (c) of this section,  
16 the removal applies only to the land affected. If land is removed from  
17 designation because of subsection (5)(d) of this section, the removal  
18 applies only to the actual area of land that is no longer primarily  
19 devoted to the growing and harvesting of timber, without regard to any  
20 other land that may have been included in the application and approved  
21 for designation, as long as the remaining designated forest land meets  
22 the definition of forest land contained in RCW 84.33.035.

23 (9) Within thirty days after the removal of designation as forest  
24 land, the assessor must notify the owner in writing, setting forth the  
25 reasons for the removal. The seller, transferor, or owner may appeal  
26 the removal to the county board of equalization in accordance with the  
27 provisions of RCW 84.40.038.

28 (10) Unless the removal is reversed on appeal a copy of the notice  
29 of removal with a notation of the action, if any, upon appeal, together  
30 with the legal description or assessor's parcel numbers for the land  
31 removed from designation must, at the expense of the applicant, be  
32 filed by the assessor in the same manner as deeds are recorded and a  
33 notation of removal from designation must immediately be made upon the  
34 assessment and tax rolls. The assessor must revalue the land to be  
35 removed with reference to its true and fair value as of January 1st of  
36 the year of removal from designation. Both the assessed value before  
37 and after the removal of designation must be listed. Taxes based on  
38 the value of the land as forest land are assessed and payable up until

1 the date of removal and taxes based on the true and fair value of the  
2 land are assessed and payable from the date of removal from  
3 designation.

4 (11) Except as provided in subsection (5)(c), (13), or (14) of this  
5 section, a compensating tax is imposed on land removed from designation  
6 as forest land. The compensating tax is due and payable to the  
7 treasurer thirty days after the owner is notified of the amount of this  
8 tax. As soon as possible after the land is removed from designation,  
9 the assessor must compute the amount of compensating tax and mail a  
10 notice to the owner of the amount of compensating tax owed and the date  
11 on which payment of this tax is due. The amount of compensating tax is  
12 equal to the difference between the amount of tax last levied on the  
13 land as designated forest land and an amount equal to the new assessed  
14 value of the land multiplied by the dollar rate of the last levy  
15 extended against the land, multiplied by a number, in no event greater  
16 than nine, equal to the number of years for which the land was  
17 designated as forest land, plus compensating taxes on the land at  
18 forest land values up until the date of removal and the prorated taxes  
19 on the land at true and fair value from the date of removal to the end  
20 of the current tax year.

21 (12) Compensating tax, together with applicable interest thereon,  
22 becomes a lien on the land, which attaches at the time the land is  
23 removed from designation as forest land and has priority and must be  
24 fully paid and satisfied before any recognizance, mortgage, judgment,  
25 debt, obligation, or responsibility to or with which the land may  
26 become charged or liable. The lien may be foreclosed upon expiration  
27 of the same period after delinquency and in the same manner provided by  
28 law for foreclosure of liens for delinquent real property taxes as  
29 provided in RCW 84.64.050. Any compensating tax unpaid on its due date  
30 will thereupon become delinquent. From the date of delinquency until  
31 paid, interest is charged at the same rate applied by law to delinquent  
32 ad valorem property taxes.

33 (13) The compensating tax specified in subsection (11) of this  
34 section may not be imposed if the removal of designation under  
35 subsection (5) of this section resulted solely from:

36 (a) Transfer to a government entity in exchange for other forest  
37 land located within the state of Washington;

1 (b) A taking through the exercise of the power of eminent domain,  
2 or sale or transfer to an entity having the power of eminent domain in  
3 anticipation of the exercise of such power;

4 (c) A donation of fee title, development rights, or the right to  
5 harvest timber, to a government agency or organization qualified under  
6 RCW 84.34.210 and 64.04.130 for the purposes enumerated in those  
7 sections, or the sale or transfer of fee title to a governmental entity  
8 or a nonprofit nature conservancy corporation, as defined in RCW  
9 64.04.130, exclusively for the protection and conservation of lands  
10 recommended for state natural area preserve purposes by the natural  
11 heritage council and natural heritage plan as defined in chapter 79.70  
12 RCW or approved for state natural resources conservation area purposes  
13 as defined in chapter 79.71 RCW. At such time as the land is not used  
14 for the purposes enumerated, the compensating tax specified in  
15 subsection (11) of this section is imposed upon the current owner;

16 (d) The sale or transfer of fee title to the parks and recreation  
17 commission for park and recreation purposes;

18 (e) Official action by an agency of the state of Washington or by  
19 the county or city within which the land is located that disallows the  
20 present use of the land;

21 (f) The creation, sale, or transfer of forestry riparian easements  
22 under RCW 76.13.120;

23 (g) The creation, sale, or transfer of a conservation easement of  
24 private forest lands within unconfined channel migration zones or  
25 containing critical habitat for threatened or endangered species under  
26 RCW 76.09.040;

27 (h) The sale or transfer of land within two years after the death  
28 of the owner of at least a fifty percent interest in the land if the  
29 land has been assessed and valued as classified forest land, designated  
30 as forest land under this chapter, or classified under chapter 84.34  
31 RCW continuously since 1993. The date of death shown on a death  
32 certificate is the date used for the purposes of this subsection  
33 (13)(h); or

34 (i)(i) The discovery that the land was designated under this  
35 chapter in error through no fault of the owner. For purposes of this  
36 subsection (13)(i), "fault" means a knowingly false or misleading  
37 statement, or other act or omission not in good faith, that contributed



1 to the approval of designation under this chapter or the failure of the  
2 assessor to remove the land from designation under this chapter.

3 (ii) For purposes of this subsection (13), the discovery that land  
4 was designated under this chapter in error through no fault of the  
5 owner is not the sole reason for removal of designation under  
6 subsection (5) of this section if an independent basis for removal  
7 exists. An example of an independent basis for removal includes the  
8 land no longer being devoted to and used for growing and harvesting  
9 timber.

10 (14) In a county with a population of more than six hundred  
11 thousand inhabitants or in a county with a population of at least two  
12 hundred forty-five thousand inhabitants that borders Puget Sound as  
13 defined in RCW 90.71.010, the compensating tax specified in subsection  
14 (11) of this section may not be imposed if the removal of designation  
15 as forest land under subsection (5) of this section resulted solely  
16 from:

17 (a) An action described in subsection (13) of this section; or

18 (b) A transfer of a property interest to a government entity, or to  
19 a nonprofit historic preservation corporation or nonprofit nature  
20 conservancy corporation, as defined in RCW 64.04.130, to protect or  
21 enhance public resources, or to preserve, maintain, improve, restore,  
22 limit the future use of, or otherwise to conserve for public use or  
23 enjoyment, the property interest being transferred. At such time as  
24 the property interest is not used for the purposes enumerated, the  
25 compensating tax is imposed upon the current owner.

26 **Sec. 28.** RCW 84.34.108 and 2009 c 513 s 2, 2009 c 354 s 3, 2009 c  
27 255 s 2, and 2009 c 246 s 3 are each reenacted and amended to read as  
28 follows:

29 (1) When land has once been classified under this chapter, a  
30 notation of the classification (~~shall~~) must be made each year upon  
31 the assessment and tax rolls and the land (~~shall~~) must be valued  
32 pursuant to RCW 84.34.060 or 84.34.065 until removal of all or a  
33 portion of the classification by the assessor upon occurrence of any of  
34 the following:

35 (a) Receipt of notice from the owner to remove all or a portion of  
36 the classification;

1 (b) Sale or transfer to an ownership, except a transfer that  
2 resulted from a default in loan payments made to or secured by a  
3 governmental agency that intends to or is required by law or regulation  
4 to resell the property for the same use as before, making all or a  
5 portion of the land exempt from ad valorem taxation;

6 (c) Sale or transfer of all or a portion of the land to a new  
7 owner, unless the new owner has signed a notice of classification  
8 continuance, except transfer to an owner who is an heir or devisee of  
9 a deceased owner (~~shall~~) or transfer by a transfer on death deed does  
10 not, by itself, result in removal of classification. The notice of  
11 continuance (~~shall~~) must be on a form prepared by the department. If  
12 the notice of continuance is not signed by the new owner and attached  
13 to the real estate excise tax affidavit, all additional taxes  
14 calculated pursuant to subsection (4) of this section (~~shall~~) become  
15 due and payable by the seller or transferor at time of sale. The  
16 auditor (~~shall~~) may not accept an instrument of conveyance regarding  
17 classified land for filing or recording unless the new owner has signed  
18 the notice of continuance or the additional tax has been paid, as  
19 evidenced by the real estate excise tax stamp affixed thereto by the  
20 treasurer. The seller, transferor, or new owner may appeal the new  
21 assessed valuation calculated under subsection (4) of this section to  
22 the county board of equalization in accordance with the provisions of  
23 RCW 84.40.038. Jurisdiction is hereby conferred on the county board of  
24 equalization to hear these appeals;

25 (d)(i) Determination by the assessor, after giving the owner  
26 written notice and an opportunity to be heard, that all or a portion of  
27 the land no longer meets the criteria for classification under this  
28 chapter. The criteria for classification pursuant to this chapter  
29 continue to apply after classification has been granted.

30 (ii) The granting authority, upon request of an assessor, (~~shall~~)  
31 must provide reasonable assistance to the assessor in making a  
32 determination whether the land continues to meet the qualifications of  
33 RCW 84.34.020 (1) or (3). The assistance (~~shall~~) must be provided  
34 within thirty days of receipt of the request.

35 (2) Land may not be removed from classification because of:

36 (a) The creation, sale, or transfer of forestry riparian easements  
37 under RCW 76.13.120; or

1 (b) The creation, sale, or transfer of a fee interest or a  
2 conservation easement for the riparian open space program under RCW  
3 76.09.040.

4 (3) Within thirty days after the removal of all or a portion of the  
5 land from current use classification under subsection (1) of this  
6 section, the assessor (~~shall~~) must notify the owner in writing,  
7 setting forth the reasons for the removal. The seller, transferor, or  
8 owner may appeal the removal to the county board of equalization in  
9 accordance with the provisions of RCW 84.40.038. The removal notice  
10 must explain the steps needed to appeal the removal decision, including  
11 when a notice of appeal must be filed, where the forms may be obtained,  
12 and how to contact the county board of equalization.

13 (4) Unless the removal is reversed on appeal, the assessor  
14 (~~shall~~) must revalue the affected land with reference to its true and  
15 fair value on January 1st of the year of removal from classification.  
16 Both the assessed valuation before and after the removal of  
17 classification (~~shall~~) must be listed and taxes (~~shall~~) must be  
18 allocated according to that part of the year to which each assessed  
19 valuation applies. Except as provided in subsection (6) of this  
20 section, an additional tax, applicable interest, and penalty (~~shall~~)  
21 must be imposed which (~~shall be~~) are due and payable to the treasurer  
22 thirty days after the owner is notified of the amount of the additional  
23 tax. As soon as possible, the assessor (~~shall~~) must compute the  
24 amount of additional tax, applicable interest, and penalty and the  
25 treasurer (~~shall~~) must mail notice to the owner of the amount thereof  
26 and the date on which payment is due. The amount of the additional  
27 tax, applicable interest, and penalty (~~shall~~) must be determined as  
28 follows:

29 (a) The amount of additional tax (~~shall be~~) is equal to the  
30 difference between the property tax paid as "open space land," "farm  
31 and agricultural land," or "timber land" and the amount of property tax  
32 otherwise due and payable for the seven years last past had the land  
33 not been so classified;

34 (b) The amount of applicable interest (~~shall be~~) is equal to the  
35 interest upon the amounts of the additional tax paid at the same  
36 statutory rate charged on delinquent property taxes from the dates on  
37 which the additional tax could have been paid without penalty if the  
38 land had been assessed at a value without regard to this chapter;

1 (c) The amount of the penalty (~~shall be~~) is as provided in RCW  
2 84.34.080. The penalty (~~shall~~) may not be imposed if the removal  
3 satisfies the conditions of RCW 84.34.070.

4 (5) Additional tax, applicable interest, and penalty(~~, shall~~)  
5 become a lien on the land (~~which shall attach~~) that attaches at the  
6 time the land is removed from classification under this chapter and  
7 (~~shall~~) have priority to and (~~shall~~) must be fully paid and  
8 satisfied before any recognizance, mortgage, judgment, debt, obligation  
9 or responsibility to or with which the land may become charged or  
10 liable. This lien may be foreclosed upon expiration of the same period  
11 after delinquency and in the same manner provided by law for  
12 foreclosure of liens for delinquent real property taxes as provided in  
13 RCW 84.64.050. Any additional tax unpaid on its due date (~~shall~~)  
14 will thereupon become delinquent. From the date of delinquency until  
15 paid, interest (~~shall~~) must be charged at the same rate applied by  
16 law to delinquent ad valorem property taxes.

17 (6) The additional tax, applicable interest, and penalty specified  
18 in subsection (4) of this section (~~shall~~) may not be imposed if the  
19 removal of classification pursuant to subsection (1) of this section  
20 resulted solely from:

21 (a) Transfer to a government entity in exchange for other land  
22 located within the state of Washington;

23 (b)(i) A taking through the exercise of the power of eminent  
24 domain, or (ii) sale or transfer to an entity having the power of  
25 eminent domain in anticipation of the exercise of such power, said  
26 entity having manifested its intent in writing or by other official  
27 action;

28 (c) A natural disaster such as a flood, windstorm, earthquake, or  
29 other such calamity rather than by virtue of the act of the landowner  
30 changing the use of the property;

31 (d) Official action by an agency of the state of Washington or by  
32 the county or city within which the land is located which disallows the  
33 present use of the land;

34 (e) Transfer of land to a church when the land would qualify for  
35 exemption pursuant to RCW 84.36.020;

36 (f) Acquisition of property interests by state agencies or agencies  
37 or organizations qualified under RCW 84.34.210 and 64.04.130 for the  
38 purposes enumerated in those sections. At such time as these property

1 interests are not used for the purposes enumerated in RCW 84.34.210 and  
2 64.04.130 the additional tax specified in subsection (4) of this  
3 section (~~shall~~) must be imposed;

4 (g) Removal of land classified as farm and agricultural land under  
5 RCW 84.34.020(2)(f);

6 (h) Removal of land from classification after enactment of a  
7 statutory exemption that qualifies the land for exemption and receipt  
8 of notice from the owner to remove the land from classification;

9 (i) The creation, sale, or transfer of forestry riparian easements  
10 under RCW 76.13.120;

11 (j) The creation, sale, or transfer of a conservation easement of  
12 private forest lands within unconfined channel migration zones or  
13 containing critical habitat for threatened or endangered species under  
14 RCW 76.09.040;

15 (k) The sale or transfer of land within two years after the death  
16 of the owner of at least a fifty percent interest in the land if the  
17 land has been assessed and valued as classified forest land, designated  
18 as forest land under chapter 84.33 RCW, or classified under this  
19 chapter continuously since 1993. The date of death shown on a death  
20 certificate is the date used for the purposes of this subsection  
21 (6)(k); or

22 (l)(i) The discovery that the land was classified under this  
23 chapter in error through no fault of the owner. For purposes of this  
24 subsection (6)(l), "fault" means a knowingly false or misleading  
25 statement, or other act or omission not in good faith, that contributed  
26 to the approval of classification under this chapter or the failure of  
27 the assessor to remove the land from classification under this chapter.

28 (ii) For purposes of this subsection (6), the discovery that land  
29 was classified under this chapter in error through no fault of the  
30 owner is not the sole reason for removal of classification pursuant to  
31 subsection (1) of this section if an independent basis for removal  
32 exists. Examples of an independent basis for removal include the owner  
33 changing the use of the land or failing to meet any applicable income  
34 criteria required for classification under this chapter.

35 NEW SECTION. **Sec. 29.** Section 23 of this act takes effect if the  
36 Washington uniform power of attorney act (House/Senate Bill No. . . . )  
37 is not enacted during the 2013 regular legislative session.

1        NEW\_SECTION.   **Sec. 30.**  If any provision of this act or its  
2 application to any person or circumstance is held invalid, the  
3 remainder of the act or the application of the provision to other  
4 persons or circumstances is not affected.

5        NEW\_SECTION.   **Sec. 31.**  Sections 1 through 17 of this act  
6 constitute a new chapter in Title 64 RCW.

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